

**SOAH DOCKET NO. 453-05-5149.M5
TWCC MR NO. M5-05-1154-01**

**MARK C. SHERROD, D.C., L.P.,
Petitioner**

V.

**LIBERTY MUTUAL FIRE INSURANCE,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mark C. Sherrod, D.C. (Provider) contested the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) declining to order reimbursement of \$720.50 for chiropractic manipulative treatment, spinal, 3-4 regions (CPT Code 98941), electrical stimulation unattended (CPT Code G0283), mechanical traction (CPT Code 97012), manual therapy technique (CPT Code 97140), level II office visit (CPT Code 99212-25), ultrasound (CPT Code 97035), and myofascial release (CPT Code 97250-52) provided to Claimant on 11 dates of service from December 10, 2003, through July 15, 2004. Liberty Mutual Fire Insurance (Carrier) denied reimbursement on the basis that the treatment was not reasonable or medically necessary per peer review. The Administrative Law Judge (ALJ) finds the disputed treatment was reasonable and medically necessary. Therefore, Carrier is to reimburse Provider \$720.50.

I. PROCEDURAL HISTORY

ALJ Sharon Cloninger convened the hearing on November 8, 2005, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Mark C. Sherrod, D.C., appeared *pro se* by telephone. Carrier was represented by Kevin Franta, attorney, who appeared in person. The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below. Provider testified on his own behalf. Carrier offered two exhibits, which were admitted into evidence. After evidence was presented, the hearing concluded and the record closed that same day.

II. APPLICABLE LAW

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury, as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE § 408.021(a).

III. FINDINGS OF FACT

1. Claimant sustained a compensable work-related injury to his back on ____, when he slipped and fell on ice while working for an independent school district whose workers' compensation carrier was Liberty Mutual Fire Insurance (Carrier).
2. Claimant's compensable injury was diagnosed as a sprain/strain.
3. Mark C. Sherrod, D.C. (Provider) began treating Claimant on February 14, 2003, for persistent and increasing back pain with altered gait.
4. On June 23, 2003, Claimant underwent a lumbar MRI. The results indicated multiple levels of degenerative disc disease and mild spinal canal narrowing at L3-4 and L4-5 and very mild canal narrowing at L2-3, with neuroforaminal stenosis at these levels.
5. Provider's treatment of Claimant on 11 disputed dates of service from December 10, 2003, through July 15, 2004, included chiropractic manipulative treatment, spinal, 3-4 regions (CPT Code 98941), electrical stimulation unattended (CPT Code G0283), mechanical traction (CPT Code 97012), manual therapy technique (CPT Code 97140), level II office visit (CPT Code 99212-25), ultrasound (CPT Code 97035), and myofascial release (CPT Code 97250-52).
6. Provider's treatment of Claimant on the disputed dates of service relieved the effects naturally resulting from the compensable injury:
 - (a) On December 10, 2003, Claimant reported to Provider with back pain at 8 out of 10, with 10 being the highest, and thigh pain at 7 out of 10. Claimant, who continued to be gainfully employed, told Provider the return of pain was probably related to increased levels of activities and prolonged episodes of sitting while at work. His response to manipulation was favorable, creating relief.
 - (b) On December 17, 2003, Claimant reported to Provider that he had felt better after the December 10, 2003 treatment until the following Sunday, when he experienced a moderate level of increasing discomfort in the lower back with pain and paresthesia radiating into his lower left extremity. He started the visit with a pain level of 7 in his back and thigh, and had a favorable response to manipulation.

- (c) On December 24, 2003, Claimant reported to Provider with back pain at 8 and thigh pain at 7. He said there was substantial improvement following his previous visit but that he had experienced a return of discomfort in the lower back and lumbo pelvic region as well as the left lower extremity, noting that increased levels of prolonged sitting appeared to provoke his condition. His response to manipulation was favorable.
- (d) On January 8, 2004, Claimant reported to Provider with an acute exacerbation of lower back and left lumbo pelvic region discomfort noting increased levels of paresthesia and pain referrals into the lower left extremity. Claimant stated that his return-to-work activities following the school holidays, which included increased levels of prolonged sitting, contributed to the aggravation. Provider found increased levels of muscle guarding and tenderness to palpation in Claimant's areas of pain. Claimant's response to manipulation was restricted but favorable.
- (e) On January 21, 2004, Claimant reported he had suffered an acute exacerbation of his compensable injury due to extensive driving and sitting related to his job, resulting in a pain level of 8 for both his lower back and left thigh. Provider found moderate levels of joint fixation, muscle guarding and tenderness to palpation with emphasis on the left side. Claimant's response to manipulation was somewhat restricted, but favorable.
- (f) On February 19, 2004, Claimant reported an exacerbation of his condition due to prolonged spells of sitting and driving that are required as part of his job. He reported lower back and lumbo pelvic discomfort with concurrent episodes of left lower extremity pain. His response to manipulation was favorable.
- (g) On March 19, 2004, Claimant reported exacerbation of thoraco-lumbar, lower lumbar, lumbosacral and lumbo pelvic discomfort over the previous two-to-four days, possibly related to working in his yard and mowing the grass. He said he had attempted unsuccessfully to manage his pain at home, so decided to enter for care. His response to manipulation was favorable.
- (h) On April 19, 2004, Claimant reported an acute exacerbation creating persistent low back pain and left lower extremity pain, probably related to increased yard work and prolonged sitting at work. He attempted home management for three or four days without success before seeking care from Provider. Claimant's response to manipulation was favorable.
- (i) On May 7, 2004, Claimant reported an acute exacerbation of his lower back and lumbo-pelvic discomfort with episodes of left lateral thigh discomfort. He reported no specific activity of aggravation other than increased levels of prolonged sitting. Claimant's response to manipulation was favorable.

- (j) On July 13, 2004, Claimant reported exacerbation of his compensable injury, probably related to two recent long trips with prolonged sitting and driving. He tried home management of the pain, but it progressed over the previous four or five days. His response to manipulation was restricted but favorable.
- (k) On July 15, 2004, Claimant reported mild improvement with recent acute exacerbation of lower back and lower extremity pain. Provider found decreased levels of muscle guarding and tenderness to palpation. Claimant's response to manipulation was restricted but improved.
10. James Todd Gray, D.C., performed a functional capacity evaluation (FCE) on Claimant on February 3, 2004. The FCE showed Claimant's lumbar range of motion to be limited in some areas, with increased pain with motion. Dr. Gray recommended that Claimant continue chiropractic care with Provider for exacerbations or increased pain. He noted that Claimant had occasional low back and left posterior leg pain exacerbations which were usually relieved with stretching and chiropractic manipulations.
 11. Dr. Gray, a Designated and Impairment Rating Doctor for the Commission, found Claimant to be at maximum medical improvement on February 3, 2004, with a five percent impairment rating.
 12. Provider sought reimbursement of \$720.50 for the disputed services listed above.
 13. Carrier denied Provider's claim for the above services on the basis that the treatments were not reasonable or medically necessary per peer review, using denial code "V."
 14. In December 2004 Provider filed a request for medical dispute resolution with the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC), asking for reimbursement of \$720.50 for the above-described services.
 15. After its review of the IRO decision issued February 11, 2005, in this dispute, the MRD issued a decision on March 15, 2005, stating that Provider did not prevail on the issue of medical necessity.
 16. On March 23, 2005, Provider contested the MRD decision and asked for a hearing before the State Office of Administrative Hearings (SOAH).
 17. On April 20, 2005, TWCC mailed notice of the hearing to Provider and Carrier.
 18. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
 19. On November 8, 2005, SOAH Administrative Law Judge Sharon Cloninger held a hearing on Provider's appeal in the William P. Clements Building, Fourth Floor, 300 West 15th

Street, Austin, Texas. Provider appeared *pro se* by telephone. Carrier was represented by Kevin Franta, attorney. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely filed notice of appeal of the decision of TWCC's MRD, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC § 148.4(b).
4. As the party appealing the MRD decision, Provider had the burden of proving the case by a preponderance of the evidence.
5. Based on the above Findings of Fact and pursuant to TEX. LABOR CODE § 408.021(a), Provider's treatment of Claimant's compensable injury was reasonable and medically necessary.
6. Based on the above Findings of Fact and Conclusions of Law, Provider's appeal should be granted, and Provider should be reimbursed \$720.50 plus applicable interest.

ORDER

IT IS, THEREFORE, ORDERED THAT Liberty Mutual Insurance should reimburse Mark Sherrod, D.C., in the amount of \$720.50 plus applicable interest for the disputed services.

SIGNED November 30, 2005.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**